IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23070 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAUDHARY RAMILABEN D/O,DALJIBHAI HATHABHAI
Versus
DESAI ASHVINBHAI JITUBHAI

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Appearance :
MR ABHAYKUMAR P SHAH for the Petitioner
MR KM SHETH for the Respondent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 18/04/2007

ORAL JUDGMENT

1. **RULE**. Learned Advocate Mr.K.M.Sheth waives service of Rule on behalf of the respondent.

2. The petitioner – wife – original defendant is before

this Court being aggrieved by order passed by the learned Judicial Magistrate First Class, Mehsana dated 02.08.2006 below Exh.15 in HMP No.69 of 2005, whereby the learned Judge was pleased to award interim maintenance @ Rs.500/- to be paid between 1st to 15th of every month till further orders are made.

3. Mr.Shah, learned Advocate for the petitioner vehemently submitted that the amount awarded is too law; that the order is passed without taking into consideration a decision of this Court in the matter of **KALABEN KALABHAI DESAI VS. ALABHAI KARAMSHIBHAI DESAI**, reported in AIR 2000 GUJARAT 232. Learned Advocate for the petitioner submitted that it is for the husband to satisfy the Court about his income. He submitted that as the respondent was not asked to discharge that burden, the order is vitiated.

4. Taking into consideration the submissions of Mr.Shah, learned Advocate for the petitioner, order dated 02.08.2006 is quashed and set aside.

The matter is remanded to the learned Judicial Magistrate First Class, Mehsana for deciding Exh.15 afresh, after taking into consideration the observations made by this Court in the matter of Kalaben Kalabhai Desai (supra).

The fact that the learned Judicial Magistrate First Class has once decided Exh.15 application in HMP No.69 of 2005, it is deemed fit that on remand, the application be decided by any other learned Judicial Magistrate First Class then Mr.M.R.Soni.

5. The petition is allowed. Rule is made absolute with no order as to costs. Direct service is permitted.

(RAVI R.TRIPATHI, J.)

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